

*Arizona Supreme Court
Judicial Ethics Advisory Committee*

ADVISORY OPINION 91-05
(October 10, 1991)

**Voluntary Testimony Concerning the Administrative
Performance of a Presiding Judge**

Issue

May a magistrate ethically appear and testify at a city judicial merit commission hearing on the administrative performance of the presiding magistrate of the same court without a subpoena issued by the commission?

Answer: Yes.

Discussion

Canon 4B states that a judge "may appear at a public hearing before an executive or legislative body or official on matters concerning . . . the administration of justice." The nature of the proceedings before the magistrate selection commission is to decide whether the presiding magistrate has performed his administrative functions as chief city magistrate in such a manner as to warrant his retention in the chief's position. Accordingly, appearance by a magistrate at the meeting would come under the permission granted in Canon 4B. A magistrate whose duties are subject to the administration by the chief magistrate would have the right to comment upon that administration and appears to be in a position to contribute an informed perspective relevant to the inquiry.

Accordingly, under the circumstances of the pending proceedings and the relationship of the interested magistrates, we conclude that any affected magistrate could voluntarily appear to testify about the administrative performance of a chief magistrate. The situation is distinguishable from that adverted to in Canon 2B, proscribing the use of the judicial office to advance the private interests of others. In a proceedings where the administration of justice is not in question, Canon 2 forecloses a judge from voluntarily testifying as a character witness. We find that canon is not implicated in the situation before us.

Applicable Code Sections

Arizona Code of Judicial Conduct, Canons 2B and 4B (1985).